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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. 471/ सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (In Jail)	Bhagirathi, S/o Johan Sahu, Aged about 40 years, R/o Tundra, P.S. Bilaigarh, District Raipur (C.G.)
		- Versus -
	RESPONDENT:	State of Chhattisgarh, Through P.S. Sheorinarayan, District Janjgir-Champa (C.G.)

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure}

Present:

Mrs. Usha Chandrakar, counsel for the appellant.

Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.**

ORAL JUDGMENT

(Delivered on 27th April, 2007)

L.C. BHADOO, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 31st January, 2002, passed by the Additional Sessions Judge, Janjgir in Sessions Trial No.308/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.200/-.

मामला क्रमांक G.A.471/ **सन्** 2002

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2	Case of the prosecution, in brief, is that on 21-5-2000, accused Bhagirathi along with his wife Kaushilya Bai and son Tekaram, aged about 4 years, went to the house of his brother-in-law Radheylal in Village: Loharsi. After taking dinner, the accused went for sleep. At about 11 p.m., Kaushilya Bai raised cries 'save save' on which Radheylal along with neighbours Shyamlal & Ramkumar reached near the room where the accused along with his wife was inside. The room was bolted from inside. The accused opened the door of the room with great difficulty, then these persons saw that Kaushilya Bai was lying on the ground in the pool of blood. On enquiry, the accused made extra judicial confession before them that ~~within~~ 4-5 months back he along with Kaushilya Bai went to Punjab & Kashmir to earn livelihood, he saw that his wife developed illicit relations with some other persons, therefore, he attacked his wife with pick axe and committed her murder.	
3.	The matter was reported by Radheylal in Police Station Shivrinarayan on which the report Ex.P-1 was registered. Merg intimation Ex.P-2 was given by Radheylal. The Investigating Officer left for the scene of occurrence and after giving notice Ex.P-9 to the Panchas, he prepared the inquest Ex.P-10 on the body of Kashilya Bai. While in police custody, the accused gave memorandum Ex.P-5 about the pick axe and in pursuance of the information given by the accused, the pick axe was seized under Ex.P-6. One Chhaddi of the accused was seized under Ex.P-7. Blood stained soil and plain soil were seized under Ex.P-8. Site plan Ex.P-13 was prepared by the Patwari. Body of Kaushilya Bai was sent for post-mortem examination to Govt. Hospital, Shivrinarayan under Ex.P-14 where Dr. R.S. Prabhakar (PW-13) conducted post-mortem and prepared the report	

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	Ex.P-22. He opined that the cause of death is grievous injury to both lungs and haemorrhage, the nature of death is homicidal. The pick axe in question was sent for opinion to the doctor and the doctor gave the report Ex.P-23. Seized articles were sent for examination to Forensic Science Laboratory, Sagar, from where the report dated 31st July, 2000 was received.	
4.	After completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, Janjgir, who in turn, committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge, Janjgir, received the case on transfer for trial.	
5.	The prosecution examined 13 witnesses at the trial to establish charge against the accused. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime. The accused further stated that his brother-in-law Radheylal attempted to commit rape on his wife when he and his wife raised objection, Radheylal committed the murder of his wife and he has been falsely implicated.	
6.	Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as aforementioned.	
7.	We have heard Mrs. Usha Chandrakar, learned counsel for the appellant and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/ respondent.	

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8.	Mrs. Usha Chandrakar has not disputed the homicidal death of Kaushilya Bai. Moreover, Radheylal (PW-1), Ramkumar (PW-2) & Shyamlal (PW-3) have categorically stated that when they heard the cries of Kaushilya Bai they went near the room in which the accused and Kaushilya Bai were sleeping, the door was locked from inside, however, with great difficulty they could persuade accused Bhagirathi to open the door, when he opened the door, they saw that Kaushilya Bai was lying in a pool of blood on the ground and on enquiry, the accused made extra judicial confession that he has committed her murder with pick axe, because 4-5 months back when they were in Punjab, Kaushilya Bai developed illicit relations with few persons. Above evidence is corroborated by the medical evidence of Dr. R.S. Prabhakar (PW-13) who has stated that on 22.05.2000 he conducted post-mortem on the body of Kaushilya Bai and noticed 15 incised wounds, cause of death was haemorrhage and injuries to lungs, the death was homicidal in nature. Therefore, in view of the above ocular and medical evidence, it is established that the death of Kashilya Bai was homicidal in nature.	
9.	As far as involvement of the accused/appellant in the crime in question is concerned, Radheylal (PW-1), who is brother-in-law i.e. Behnoi of accused Bhagirathi, has stated that on the fateful night Bhagirathi along with his wife Kashilya Bai (since deceased) and four years' child came to his house, they were sleeping in a room, whereas he was sleeping outside, in the night they started quarrelling, hearing the commotion, neighbours Ramkumar & Shyamlal came and asked him to wake up and informed that the guests staying in the room are quarreling, on which he along with those persons went near the door of the room in which the	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G. A. 471/ सन् 200 2

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	accused and the deceased were sleeping, with great difficulty they could persuade Bhagirathi to open the door on which he opened the door, and they saw that Kaushilya Bai was lying in injured condition in a pool of blood on the ground in the room. On enquiry, the accused made extra judicial confession that he has committed the murder of his wife with pick axe because, she had developed illicit relations with few persons when they were in Punjab 4-5 months back.	
	10. Above evidence of Radheylal is corroborated by Ramkumar (PW-2) & Shyamlal (PW-3), in their cross-examination, defence has not been able to elicit any circumstance which discredits the evidence of these witnesses. A suggestion has been made in cross-examination of Radheylal (PW-1) that he tried to outrage the modesty of Kaushilya Bai – wife of the accused, when the accused and Kaushilya Bai objected, he committed the murder of Kaushilya Bai, but this suggestion has been denied by Rahdeylal. Moreover, there are other two witnesses namely Ramkumar (PW-2) & Shyamlal (PW-3). They have stated that the accused opened the door, Kaushilya Bai was lying in injured condition and on enquiry, he made extra judicial confession before them.	
	11. In the first instance, Radheylal is relative of the accused, the accused and his family came to his house, wife of Radheylal was already in the house, therefore, it was not possible for Radheylal to make an attempt on the wife of the accused to outrage her modesty. Moreover, Ramkumar & Shyamlal are independent witnesses. They have also stated that the accused and the deceased were in the room, on hearing the commotion, they asked Radheylal to open the door, on opening the door they saw that Kaushilya	

(21)

मामला क्रमांक G.A.471/ सन् 2002

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	Bai was lying in the pool of blood. Therefore, from the above evidence it is established that the accused was the author of the crime in question.	
	12. Moreover, the pick axe was recovered at the instance of the accused, same was used as weapon of offence. Chheddi of the accused and pick axe were sent for examination to the Forensic Science Laboratory and the serologist, both were found stained with human blood. How the Chheddi was stained with human blood has not been explained by the accused. Therefore, involvement of the accused in committing the murder of his wife is established and there is ample evidence to the effect of establishing involvement of the accused in the crime in question. The accused attacked the deceased with pick axe and he caused as many as 15 incised wounds. This was a merciless murder, as such we do not find any illegality or infirmity in the judgment of the trial Court, same is based on legal and clinching evidence.	
	13. In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed.	
	Sd/- **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

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